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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/557,756	11/18/2005	David H. Nordmeyer	020356 158P2	1625

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EXAMINER

MARCANTONI, PAUL D

ART UNIT	PAPER NUMBER
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1793

MAIL DATE	DELIVERY MODE
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04/27/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/557,756	Applicant(s) NORDMEYER, DAVID H.	
	Examiner Paul Marcantoni	Art Unit 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/21/09 response to election requirement.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 4 and 5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 6-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-19 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The applicants' election of bottom ash as the elected species in their 1/21/09 response is respectfully acknowledged. It is the examiner's position that as a result of this election the only non-elected claims should be claims 4 and 5. The generic independent claims that do not identify their industrial waste product (b) component comprising calcium, silica, and alumina as bottom ash. However, bottom ash still reads on this broad generic claims and thus they were rejected.

35 USC 102/103:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 6-19 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Strabala '058, Shulman '355 B2, Bennett et al. '422, or Styron '711.

All of these references teach a cementitious composition comprising class C fly ash and bottom ash in amounts meeting applicants' claimed ranges thus anticipating applicants instant claims. The intended use as a binder or securing agent or cementing agent in the earth is understood since it is understood that these materials are

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cementitious. They are listed in the claims of all prior art references the teaching of class C fly ash and bottom ash. Even if not anticipated, overlapping ranges of amounts would have been prima facie obvious to one of ordinary skill in the art.

Strabala teaches a composition comprising class C fly ash and bottom ash (see claim1 in col.6 and claim 6 in col.7). Even if not anticipated, overlapping ranges of amounts would have been prima facie obvious to one of ordinary skill in the art.

Shulman '355 B2 teaches a structural composition comprising class C fly ash and bottom ash as set forth in examples 2 and 3 in col.8 (last 2 paragraphs). Even if not anticipated, overlapping ranges of amounts would have been prima facie obvious to one of ordinary skill in the art.

Bennett et al. '422 teach a composition comprising class C fly ash and bottom ash in claims 1-2 in cols.9-10 thus anticipating applicants' claims. Even if not anticipated, overlapping ranges of amounts would have been prima facie obvious to one of ordinary skill in the art. The Bennett et al. composition is for a backfill in earth so it reads upon applicants' preamble of securing a structural element in the earth which is a cementitious mixture.

Finally Styron (US Patent No. 4,624,711) has been cited of interest as it could have been used in a rejection of applicants' claims to the possible non-elected claims and its submission is noted so applicants can amend their claims accordingly if there is possible overlap with this prior art reference.

35 USC 112 Second Paragraph:

Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention.

The term "In a process" in the preambles of claims 1, 6, and 19 should be amended to ---A process---.

In the dependent claims to these process claims 1, 6, and 19, please amend so the dependent claims read ---The process--- and delete Process in the preamble.

In claims 14 and 15, cementitious mixture should be amended to --A cementitious mixture--.

In the dependent claims for claims 14-15, please make these claims state --The cementitious mixture-- (as opposed to Cementitious mixture).

The term "such as" is indefinite in the a) portion of claim 1. Applicants can delete "such as" and replace with ---including---. Of course that would mean if class C fly ash or cement kiln dust are found it meets limitations of the a) portion of this claim and other independent claims.

The term "more granular" is vague in b) of claim 1. What do applicants mean, that b) must be granular and not a powder? This is not understood and it is unclear what applicants wish to claim.

The term cement kiln dust poses a problem in claim 2 and 1 because if cement kiln dust can be a) and b) then applicants cementitious material reads upon cement kiln dust alone. Is that is what applicants mean? Applicants may consider

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deleting "cement kiln dust" from their markusch group in claim 2 to resolve this issue since it is already in the a) portion of claim 1.

The term "economizer ash" is vague and indefinite in claims 2, 6, and any other claim it is utilized. What is this? Is it fly ash, incinerator ash from sewage sludge or garbage, bottom ash as well? It is not clear in claim 2 what applicants mean by this term.

Claim 4 is a problem as cement kiln dust can be thus in a) and b) and those two components are thus not different in claim 1.

Please delete the quotations around the "C" in component a) of claim 6 regarding class C fly ash.

Claims 9 and 18 are vague. What do applicants mean by cement components or aggregate components. Do they mean any other cement or aggregate? Other cement/aggregate components can be admixtures or retarders or accelerators so it is not clear if applicants mean only free or devoid of any additional cement or aggregate.

Delete the quotations around the C in claim 11.

The terms "or the like" are indefinite" in claims 14 and 15 or any other claim it may be used. Please delete these terms.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Marcantoni whose telephone number is 571-272-1373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Paul Marcantoni/
Primary Examiner, Art Unit 1793